## 16 Am. Jur. 2d Constitutional Law § 29

**American Jurisprudence, Second Edition** | February 2021 Update

**Constitutional Law**

Barbara J. Van Arsdale, J.D.; James Buchwalter, J.D; Paul M. Coltoff, J.D.; John A. Gebauer, J.D.; Lonnie E. Griffith, Jr., J.D.; Janice Holben, J.D.; Sonja Larsen, J.D.; Lucas Martin, J.D.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Karl Oakes, J.D.; Karen L. Schultz, J.D.; Jeffrey J. Shampo, J.D.; and Kimberly C. Simmons, J.D.

**II. Adoption and Amendment of Constitutions**

**C. Amendment of State Constitutions**

**2. Method of Amendment of State Constitutions**

**c. Amendment of State Constitutions by Legislative Proposals and Resolutions**

# § 29. Amendment of state constitutions by legislative proposals and resolutions, generally

Topic Summary | Correlation Table | References

**West's Key Number Digest**

West's Key Number Digest, Constitutional Law 530, 531

Amendment of specific constitutional provisions may be accomplished by legislative proposal in some states,[1] usually pursuant to a requirement that such amendments first be proposed by a joint resolution of the state legislature.[2] It is sometimes, though rarely, required that such resolutions be approved by two successive legislatures.[3] However, an act of the legislature cannot, without the specific approval of the state's electorate, amend the state constitution,[4] and a constitutional amendment does not occur by legislative inattention or disregard.[5] In submitting an amendment to the people, the legislature is bound by the provisions of the constitution mandating the procedural process for amending the state constitution.[6] A state constitution may grant the legislature considerable discretion in the manner in which proposed amendments to the constitution are drafted and submitted to the people.[7] When a constitutional amendment is proposed by a state legislature through referendum, representatives debate and deliberate the proposition.[8]

**Observation:**

The constitutional requirements for legislative bills do not apply to the legislature's proposed constitutional amendments.[9]

  

The legislature can, by a single-joint resolution, propose two separate amendments to the state constitution.[10] Furthermore, nothing prevents two conflicting state constitutional amendments from being proposed or even adopted in the same election.[11]

It is generally declared that, in proposing amendments to the state constitution, a legislature is not exercising its power to make laws.[12] Indeed, the proposal of amendments to the constitution is not a power inherent in the legislative department but must be conferred by a special grant of the constitution and in the absence of such a provision, the legislature has no capacity thus to initiate amendments.[13] Further, the legislature is not authorized to assume the function of a constitutional convention and propose for adoption by the people a revision of the entire constitution under the form of an amendment or submit to their votes a proposition which, if adopted, would, by the very terms in which it is framed, be inoperative.[14]

A state secretary cannot determine the substantive merits of the legislature's proposed constitutional amendment, but in a legal sufficiency challenge, the secretary has a duty to reject a proposed amendment as legally defective for failing to satisfy form and procedural requirements; there is no requirement that the proposed amendment be patently unconstitutional on its face before the secretary must act.[15]



Footnotes

1 Kohlhaas v. State, Office of Lieutenant Governor, 223 P.3d 105 (Alaska 2010).

2 Costa v. Cortes, 142 A.3d 1004 (Pa. Commw. Ct. 2016), aff'd without opinion, 636 Pa. 508, 145 A.3d 721 (2016).

3 Browne v. City of New York, 241 N.Y. 96, 149 N.E. 211 (1925).

4 Board of Com'rs of Orleans Levee Dist. v. Gomez, 621 So. 2d 837 (La. Ct. App. 1st Cir. 1993), writ denied, 623 So. 2d 1282 (La. 1993).

5 Rocky Mountain Oil and Gas Ass'n v. State Bd. of Equalization, 749 P.2d 221 (Wyo. 1987).

6 Shepherd v. Schedler, 209 So. 3d 752 (La. 2016), on reh'g, (May 2, 2016).

7 McConkey v. Van Hollen, 2010 WI 57, 326 Wis. 2d 1, 783 N.W.2d 855 (2010).

8 Montana Association of Counties v. State by and through Fox, 2017 MT 267, 389 Mont. 183, 404 P.3d 733 (2017).

9 State ex rel. Loontjer v. Gale, 288 Neb. 973, 853 N.W.2d 494 (2014).

10 State ex rel. Slemmer v. Brown, 34 Ohio App. 2d 27, 63 Ohio Op. 2d 55, 295 N.E.2d 434 (10th Dist. Franklin County 1973).
As to amendments embracing more than one subject, see § 36.

11 Matter of Title, Ballot Title and Submission Clause for 2013-2014 #85, 2014 CO 62, 328 P.3d 136 (Colo. 2014).

12 Gafford v. Pemberton, 409 So. 2d 1367 (Ala. 1982); Opinion of the Justices of the Supreme Judicial Court, 571 A.2d 1169 (Me. 1989).

13 Ellingham v. Dye, 178 Ind. 336, 99 N.E. 1 (1912); West v. Carr, 212 Tenn. 367, 370 S.W.2d 469 (1963).

14 Johnson v. Craft, 205 Ala. 386, 87 So. 375 (1921); Ellingham v. Dye, 178 Ind. 336, 99 N.E. 1 (1912); Campbell v. City of Eugene, 116 Or. 264, 240 P. 418 (1925).

15 State ex rel. Loontjer v. Gale, 288 Neb. 973, 853 N.W.2d 494 (2014).

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**2. Method of Amendment of State Constitutions**

**c. Amendment of State Constitutions by Legislative Proposals and Resolutions**

## § 30. Requirement of entries on legislative journals in amending state constitutions by legislative proposals and resolutions

Topic Summary | Correlation Table | References

**West's Key Number Digest**

West's Key Number Digest, Constitutional Law 533

In some states, the full text of proposed constitutional amendments, together with the vote thereon, must be entered on the journals of each house of the legislature,[1] and a failure to do so may constitute a fatal defect rendering the whole amendment ineffective, notwithstanding its subsequent ratification by the people,[2] although slight irregularities[3] or mere typographical errors[4] will not be fatal. However, failure to enter on the journals a resolution proposing a constitutional amendment until after final adjournment of a legislature is a ground for issuance of a permanent injunction to forbid the state's secretary from advertising the constitutional amendment as proposed to be voted on at the general election.[5]

In some jurisdictions, the proposed amendment must be spread in full upon the journals.[6] In other jurisdictions, a resolution proposing a constitutional amendment need not be set out verbatim in the legislative journals, provided that it is fully and clearly identified by its title and each house has the resolution in its actual possession when it is passed.[7] However, the requirements of a state's constitution cannot be said to have been complied with where the proposed amendment entered upon the journals is entirely different from the amendment proposed to be submitted to the people.[8]

Footnotes

1 State ex rel. Landis v. Thompson, 120 Fla. 860, 163 So. 270 (1935).

2 McAdams v. Henley, 169 Ark. 97, 273 S.W. 355, 41 A.L.R. 629 (1925); Leach v. Brown, 167 Ohio St. 1, 3 Ohio Op. 2d 346, 145 N.E.2d 525 (1957).
As to the necessity of strict adherence to constitutional requirements regarding amendment, generally, see § 22.

3 Coulter v. Dodge, 197 Ark. 812, 125 S.W.2d 115 (1939); People ex rel. Elder v. Sours, 31 Colo. 369, 74 P. 167 (1903).

4 State ex rel. Maloney v. McCartney, 159 W. Va. 513, 223 S.E.2d 607 (1976).

5 Wichterman v. Brown, 170 Ohio St. 25, 9 Ohio Op. 2d 361, 161 N.E.2d 899 (1959).

6 McAdams v. Henley, 169 Ark. 97, 273 S.W. 355, 41 A.L.R. 629 (1925); Leach v. Brown, 167 Ohio St. 1, 3 Ohio Op. 2d 346, 145 N.E.2d 525 (1957).

7 Ex parte Ming, 42 Nev. 472, 181 P. 319, 6 A.L.R. 1216 (1919); Browne v. City of New York, 241 N.Y. 96, 149 N.E. 211 (1925); Boyd v. Olcott, 102 Or. 327, 202 P. 431 (1921).

8 Leach v. Brown, 167 Ohio St. 1, 3 Ohio Op. 2d 346, 145 N.E.2d 525 (1957).

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# 16 Am. Jur. 2d Constitutional Law § 31

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## § 31. Need for executive approval of joint resolution of legislature in regard to amendment of state constitutions

Topic Summary | Correlation Table | References

**West's Key Number Digest**

West's Key Number Digest, Constitutional Law 530

Absent an express constitutional provision to the contrary,[1] a joint resolution of a legislature proposing amendments to a state constitution does not as a rule require the approval of the governor of the state,[2] who is not considered a party to the exercise of the amendment function or process.[3] Although vetoed, such a resolution possesses full force and validity, and the judiciary may issue writs of mandamus where necessary to compel ministerial officers to perform their duties in reference to its publication.[4]



Footnotes

1 State ex rel. Livingstone v. Murray, 137 Mont. 557, 354 P.2d 552 (1960).

2 Collier v. Gray, 116 Fla. 845, 157 So. 40 (1934); Opinion of the Justices of the Supreme Judicial Court, 571 A.2d 1169 (Me. 1989).

3 Opinion of the Justices, 261 A.2d 53 (Me. 1970).

4 People ex rel. Stewart v. Ramer, 62 Colo. 128, 160 P. 1032 (1916); Collier v. Gray, 116 Fla. 845, 157 So. 40 (1934); Warfield v. Vandiver, 101 Md. 78, 60 A. 538 (1905).
As to publication, generally, see § 32.

As to judicial review of amendments, see §§ 39 to 43.

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## 16 Am. Jur. 2d Constitutional Law § 32

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**c. Amendment of State Constitutions by Legislative Proposals and Resolutions**

# § 32. Publication of state constitutional amendment proposed by legislature

Topic Summary | Correlation Table | References

**West's Key Number Digest**

West's Key Number Digest, Constitutional Law 530

After a proposed amendment has been passed by the legislature, publication of the text of the amendment is usually required to be made throughout the state[1] in one or more newspapers of general circulation in the state.[2] The purpose of such publication requirements is to inform the electorate about the effect and content of the proposed amendment.[3] In the absence of a contrary constitutional provision, the state legislature may amend the publication requirements.[4]

Substantial compliance with the publication requirement,[5] including publication for a substantial part of the prescribed period,[6] is mandatory.[7] However, a failure to make publication during a small portion of the prescribed period[8] or in every county[9] will not necessarily invalidate the amendment. An act of the legislature containing a provision relating to publication of a proposed constitutional amendment, in addition to a constitutional requirement, will be treated as directory only with respect to such provision.[10]



Footnotes

1 Kremer v. Grant, 529 Pa. 602, 606 A.2d 433 (1992).

2 In re Initiative Petition No. 341, State Question No. 627, 1990 OK 53, 796 P.2d 267 (Okla. 1990).

3 City of Glendale v. Buchanan, 195 Colo. 267, 578 P.2d 221 (1978).

4 Schulz v. New York State Bd. of Elections, 214 A.D.2d 224, 632 N.Y.S.2d 226 (3d Dep't 1995).

5 Edmonson v. Brewer, 282 Ala. 336, 211 So. 2d 469 (1968); Opinion of the Justices, 275 A.2d 558 (Del. 1971); State ex rel. Board of Fund Com'rs v. Holman, 296 S.W.2d 482 (Mo. 1956).

6 State v. Alderson, 49 Mont. 387, 142 P. 210 (1914) (overruled on other grounds by, Marshall v. State ex rel. Cooney, 1999 MT 33, 293 Mont. 274, 975 P.2d 325 (1999)).

7 Kremer v. Grant, 529 Pa. 602, 606 A.2d 433 (1992).

8 Manos v. State, 98 Tex. Crim. 87, 263 S.W. 310 (1924); State ex rel. Morgan v. O'Brien, 134 W. Va. 1, 60 S.E.2d 722 (1948).

9 Florida Hometown Democracy, Inc. v. Cobb, 953 So. 2d 666 (Fla. 1st DCA 2007).

10 Barnes v. Barnett, 241 Miss. 206, 129 So. 2d 638 (1961).

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## 16 Am. Jur. 2d Constitutional Law § 33

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**3. Validity of Amendments to State Constitutions**

# § 33. Validity of amendments to state constitutions, generally; ballot language

Topic Summary | Correlation Table | References

**West's Key Number Digest**

West's Key Number Digest, Constitutional Law 556

A proposed constitutional amendment must be accurately represented on the ballot.[1] The requirement of ballot clarity plays no favorites—it applies across-the-board to all constitutional amendments.[2] Proposed constitutional amendments are both constitutionally and statutorily required to be phrased in clear language that is not likely to deceive or mislead voters as to their nature and effect.[3] In order for ballot language describing a proposed constitutional amendment to be valid under a state constitution, the text of the ballot statement must fairly and accurately present the question or issue to be decided in order to assure a free, intelligent and informed vote by the average citizen affected, and ballot language ought to be free from any misleading tendency, whether of amplification, or omission.[4] It is fundamental that, to provide a voter with sufficient information to make an informed decision about the true nature of the proposed constitutional amendment, a ballot question must at least put voters on notice of the changes being made to the constitution.[5] When the major effect of a proposed constitutional amendment would be a substantive change in existing law, the ballot should inform the reader of the scope of the change.[6] When the language or effect of a proposed constitutional amendment or its corresponding ballot question is unclear, misleading, or deceptive, the ballot is not capable of generating the knowing and deliberate expression of voter choice necessary for ratification.[7] In determining whether the ballot information properly informs the voters about a proposed constitutional amendment, the court will presume that the average voter has a certain amount of common understanding and knowledge.[8]

The complete text,[9] or all details,[10] of a proposed amendment need not be set out in a ballot for the approval of a constitutional amendment to be valid. Only so much should be printed as may be necessary to indicate clearly the nature and purpose of

  

the amendment[11] and to permit the voters to cast an intelligent and informed ballot.[12] The proponents of an initiative bear the ultimate responsibility for formulating a clear and understandable proposal for the voters to consider.[13]

Under some state statutes, the attorney general must devise or certify the form of the question to be presented to the voters.[14] In other states, the Secretary of State[15] or a board or committee is responsible for drafting the ballot language.[16] In some states, a voter-initiated constitutional amendment may go on the ballot only if its language and its ballot summary are approved in advance by the state's supreme court.[17]

When a financial impact statement for a proposed constitutional amendment will be printed on the ballot, the same due process concerns that inure to the title and summary of a proposed amendment are also applicable to the financial impact statement.[18]

The desirability of an informed electorate in passing on changes in the fundamental law of the constitution is disputed by no one, and the practice of informing the voters of the nature of constitutional amendments has been given high priority in judicial decisions.[19] Some states, by statute, make express provision for the dissemination of information regarding proposed amendments.[20]



Footnotes

1 Detzner v. League of Women Voters of Florida, 256 So. 3d 803, 361 Ed. Law Rep. 466 (Fla. 2018).

2 Detzner v. League of Women Voters of Florida, 256 So. 3d 803, 361 Ed. Law Rep. 466 (Fla. 2018).

3 City and County of Honolulu v. State, 143 Haw. 455, 431 P.3d 1228 (2018).

4 State ex rel. Voters First v. Ohio Ballot Bd., 133 Ohio St. 3d 257, 2012-Ohio-4149, 978 N.E.2d 119 (2012).

5 City and County of Honolulu v. State, 143 Haw. 455, 431 P.3d 1228 (2018).

6 City and County of Honolulu v. State, 143 Haw. 455, 431 P.3d 1228 (2018).

7 City and County of Honolulu v. State, 143 Haw. 455, 431 P.3d 1228 (2018).

8 Detzner v. League of Women Voters of Florida, 256 So. 3d 803, 361 Ed. Law Rep. 466 (Fla. 2018).

9 Hood v. State, 24 Ariz. App. 457, 539 P.2d 931 (Div. 1 1975); Young v. Byrne, 144 N.J. Super. 10, 364 A.2d 47 (Law Div. 1976).

10 Advisory Opinion to Attorney General re 1.35% Property Tax Cap, Unless Voter Approved, 2 So. 3d 968 (Fla. 2009).

11 Ferstl v. McCuen, 296 Ark. 504, 758 S.W.2d 398 (1988).

12 Rose v. Martin, 2016 Ark. 339, 500 S.W.3d 148 (2016); State ex rel. Bailey v. Celebrezze, 67 Ohio St. 2d 516, 21 Ohio Op. 3d 463, 426 N.E.2d 493 (1981).

13 In re Title, Ballot Title, Submission Clause for 2007-2008 |62, 184 P.3d 52 (Colo. 2008).

14 Gormley v. Lan, 88 N.J. 26, 438 A.2d 519 (1981); In re Initiative Petition No. 360, State Question No. 662, 1994 OK 97, 879 P.2d 810 (Okla. 1994); Morgan v. Myers, 342 Or. 165, 149 P.3d 1160 (2006).

15 Choose Life Campaign 90 v. Del Papa, 106 Nev. 802, 801 P.2d 1384 (1990).

16 In re Title, Ballot Title, Submission Clause for 2007-2008 |62, 184 P.3d 52 (Colo. 2008).

17 Jones v. DeSantis, 410 F. Supp. 3d 1284 (N.D. Fla. 2019), aff'd on other grounds, 950 F.3d 795 (11th Cir. 2020) (applying Florida law).
As to ballot summaries, see § 34.

18 Advisory Opinion to Attorney General re Standards For Establishing Legislative District Boundaries, 2 So. 3d 161 (Fla. 2009).
A financial impact statement related to a proposed citizen initiative amendment to the state constitution regarding felons' voting rights complied with statutory requirements, where the statement was within the word-count limitation, clearly and unambiguously stated that there were likely increased costs associated with the influx of felons registering to vote, but that the exact amount of cost increase could not be

determined, and clearly and unambiguously explained that the Financial Impact Estimating Conference could not determine the impact on state and local government revenue. Advisory Opinion to the Attorney General Re: Voting Restoration Amendment, 215 So. 3d 1202 (Fla. 2017).

19 Opinion of the Justices, 102 N.H. 565, 163 A.2d 1 (1960).

20 Fairness and Accountability in Ins. Reform v. Greene, 180 Ariz. 582, 886 P.2d 1338 (1994); Tobias v. Secretary of Com., 419 Mass. 665, 646 N.E.2d 1054 (1995).

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**II. Adoption and Amendment of Constitutions**

**C. Amendment of State Constitutions**

**3. Validity of Amendments to State Constitutions**

## § 34. Ballot or amendment titles in regard to amendment of state constitutions; summaries, captions, and popular names

Topic Summary | Correlation Table | References

**West's Key Number Digest**

West's Key Number Digest, Constitutional Law 548, 557 to 565

**Forms**

Am. Jur. Pleading and Practice Forms, Constitutional Law § 41 (Complaint, petition, or declaration—Allegation—Subject matter not included in title)

The ballot title of an initiative for a proposed constitutional amendment is an indispensable part of the initiated amendment process.[1] A preelection ballot initiative title and summary must reasonably inform the voters of the character and purpose of the proposed measure[2] and must provide fair notice of the content of the proposed amendment to voters.[3] Thus, a summary statement is sufficient and fair if it makes the subject evident with sufficient clearness to give notice of the purpose to those interested or affected by the proposal.[4] State law does not require the summary of a proposed amendment to a constitutional amendment to do more than clearly communicate what it is that voters are being asked to approve or reject.[5]

The ballot title must be an impartial summary of the proposed amendment, and it must give voters a fair understanding of the issues presented and the scope and significance of the proposed changes in the law;[6] it must be intelligible and honest.[7]

  

The function of the ballot title summary in a measure to amend the constitution is to provide voters with enough information to understand what will happen if the measure is approved, i.e., to advise voters of the "breadth" of a measure's impact.[8] A sufficiently clear title will enable the electorate, whether familiar or unfamiliar with the subject matter of a particular proposal, to determine intelligently whether to support or oppose such proposal.[9] In determining whether a ballot title and summary for a proposed constitutional amendment complies with statutory requirements, it is considered: (1) whether the ballot title and summary, in clear and unambiguous language, fairly informs the voters of the chief purpose of the amendment; and (2) whether the language of the ballot title and summary, as written, will be affirmatively misleading to voters.[10] Thus, the main purpose of the preelection initiative ballot title and summary requirements is to avoid misleading the public with inaccurate information.[11] The ballot title of a proposed amendment must be free from misleading tendencies that, whether by amplification, omission, or fallacy, thwart a fair understanding of the issues presented, and it cannot omit material information that would give the voters serious ground for reflection.[12] Ballot language may be clearly and conclusively defective either in an affirmative sense, because it misleads the voters as to the material effects of the amendment, or in a negative sense by failing to inform the voters of those material effects.[13] Furthermore, a ballot title for a proposed constitutional amendment must not be tinged with partisan coloring.[14] A ballot summary for a proposed state constitutional amendment should tell the voter the legal effect of the amendment, and no more; political rhetoric that invites an emotional response from the voters is to be eschewed.[15]

Titles for initiative proposals must be fair, clear, accurate, and complete.[16] In some jurisdictions, the purpose of any ballot title is only to identify, and the ballot title is sufficient if it distinguishes the proposed amendment from others and is recognizable as referring to an amendment that was previously published in a newspaper;[17] a ballot title will be upheld unless it is worded in some way so as to constitute a manifest fraud upon the public.[18] In any case, a ballot title and summary of a proposed constitutional amendment or other public measure to be submitted to the vote of the people cannot fly under false colors or hide the ball with regard to the true effect of an amendment.[19]

The ballot title and summary need to be accurate and informative, but need not discuss every detail or consequence of the amendment[20] or contain a synopsis of the proposed amendment,[21] as titles are intended to be a relatively brief and plain statement setting forth the central features of the initiative for the voters rather than an item-by-item paraphrase of the proposed constitutional amendment or statutory provision.[22] Furthermore, the summary statement for a ballot measure for a proposed amendment need not resolve every question about cases at the periphery of the proposal.[23] However, if information omitted from the ballot title is an essential fact that would give the voter serious ground for reflection, it must be disclosed.[24]

The length of a ballot title does not, in itself, render a ballot title insufficient to allow a voter to reach an intelligent and informed decision for or against a proposal.[25] However, in many states, there is a limit on the number of words that can be placed on the ballot to explain the purpose of a proposed amendment,[26] and in others, the ballot title must be written so as to be understood by citizens who have a certain reading-comprehension level.[27] In some states, catch phrases are not allowed. The purpose of the prohibition on the use of catch phrases in proposed initiative titles is to prevent prejudice and voter confusion, not to forbid the use of language that proponents of the initiative might also use in their campaigns.[28] Phrases in the title that merely describe an initiative proposal are not impermissible catch phrases, while phrases that provoke emotion such that they distract from the merits of the proposal are catch phrases.[29] A ballot summary must not require the voter to infer a meaning which is nowhere evident on the face of the summary itself.[30]

The ballot title cannot be read in isolation; the ballot summary and title are to be read together.[31] Thus, when determining whether a ballot title and summary are misleading, it is appropriate to consider both together.[32] Also, the burden is on the

  

opponents of the language contained in a summary statement of a proposed constitutional amendment to show that the language was insufficient and unfair.[33]

In some states, the popular name of an initiative for a proposed constitutional amendment is an indispensable part of the initiated amendment process.[34] The purpose of the popular name is to identify the proposal for discussion prior to the election[35] and is primarily a useful legislative device that need not contain the same detailed information or include exceptions that might be required of a ballot title.[36] The popular name for an initiative to amend a state constitution must be intelligible, honest, and impartial,[37] and the popular name cannot contain catch phrases or slogans that tend to mislead or give partisan coloring to a proposal.[38]

Some states use "captions" for proposed constitutional amendments. Just like a summary, the function of a caption in a measure to amend the constitution is to identify the subject of a proposed measure.[39] A caption must state or describe the proposed measure's subject matter accurately and in terms that will not confuse or mislead potential petition signers and voters.[40] However, it need not necessarily catalog each and every potential effect.[41] The subject matter of a proposed constitutional amendment, for purposes of determining the accuracy of a ballot title caption describing the proposed amendment, is the actual major effect of the proposed amendment, or, if the proposed amendment has more than one major effect, all such effects.[42]

In some states, a "yes" vote result statement of a ballot title should include the results of enactment of the measure that are most significant and immediate, or that carry the greatest consequence, for the general public; the "no" vote result statement, on the other hand, should accurately describe the substance of current law on the subject matter of the proposed measure.[43] While a ballot title summary is similar to the "yes" vote result statement, in that both are required to notify voters of the measure's most significant effects or results, the summary should disclose in greater detail the proposed measure's major effects by, among other things, including additional important consequences or details that the result statement does not convey and helpful contextual information about the impact of the proposed measure on existing law.[44]

In some states, a ballot summary is not required to be provided for proposed state constitutional amendments proposed by joint resolution of the state legislature; instead, the legislature may resolve to place the exact text of a proposed amendment on a voter ballot.[45]



Footnotes

1 Walmsley v. Martin, 2012 Ark. 370, 423 S.W.3d 587 (2012).

2 Yes on 25, Citizens for an On-Time Budget v. Superior Court, 189 Cal. App. 4th 1445, 118 Cal. Rptr. 3d 290 (3d Dist. 2010).

3 Advisory Opinion to the Attorney General re Citizenship Requirement to Vote in Florida Elections, 2020 WL 238555 (Fla. 2020).
The title for a proposed ballot initiative to repeal a bill of rights for taxpayers was clear, neutral, and fairly and accurately indicated the proposed initiative's intent and meaning, such that the title allowed voters, familiar or not with the subject matter of the proposal, to determine intelligently whether to support the proposal. Matter of Title, 2019 CO 107, 454 P.3d 1056 (Colo. 2019).

4 Coburn v. Mayer, 368 S.W.3d 320, 281 Ed. Law Rep. 746 (Mo. Ct. App. W.D. 2012).

5 Detzner v. Anstead, 256 So. 3d 820 (Fla. 2018).

6 Stiritz v. Martin, 2018 Ark. 281, 556 S.W.3d 523 (2018).

7 Wilson v. Martin, 2016 Ark. 334, 500 S.W.3d 160 (2016).

8 Carson v. Kroger, 351 Or. 508, 270 P.3d 243 (2012).

9 In re Title, Ballot Title, Submission Clause for 2011-2012 No. 45, 2012 CO 26, 274 P.3d 576 (Colo. 2012).

10 Advisory Opinion to the Attorney General re Citizenship Requirement to Vote in Florida Elections, 2020 WL 238555 (Fla. 2020).

11 Yes on 25, Citizens for an On-Time Budget v. Superior Court, 189 Cal. App. 4th 1445, 118 Cal. Rptr. 3d 290 (3d Dist. 2010).

12 Stiritz v. Martin, 2018 Ark. 281, 556 S.W.3d 523 (2018).

The title of an initiative, which declared that the measure would amend the constitution to require electricity providers to generate at least 50% of their annual sales of electricity from renewable energy sources, was not false and misleading, although the title did not mention that the initiative applied only to public service corporations that provided electricity, where the title accurately stated that the measure affected electricity providers, and interested voters were placed on notice to read the initiative's text for details. Leach v. Reagan, 245 Ariz. 430, 430 P.3d 1241 (2018).

An allegation that state officers' actions in preparing allegedly misleading ballot titles for an organization's proposed amendments to the state constitution violated the organization's First Amendment free speech rights failed to state a claim, where no restriction was placed on the organization's ability to circulate petitions or otherwise engage in political speech, and no burden was placed on its ability to publicize its own views or to use its preferred language while collecting signatures. Missouri Roundtable for Life v. Carnahan, 676 F.3d 665 (8th Cir. 2012) (applying Missouri law).

13 Advisory Opinion to Attorney General re Right to Competitive Energy Market for Customers of Investor-Owned Utilities, 287 So. 3d 1256 (Fla. 2020).

14 Rose v. Martin, 2016 Ark. 339, 500 S.W.3d 148 (2016).

15 Florida Dept. of State v. Mangat, 43 So. 3d 642 (Fla. 2010).

16 In re Title, Ballot Title, Submission Clause for 2007-2008 |62, 184 P.3d 52 (Colo. 2008).

In an initiative petition that would modify a state constitution to permit either a legislative body or the people exercising their initiative power to regulate campaign contributions and expenditures, the ballot title was required to state that the term "regulate" was undefined, as the term could encompass some or all of a range of regulatory measures. Markley v. Rosenblum, 362 Or. 855, 418 P.3d 13 (2018).

The title for a proposed initiative to establish a state constitutional right to a healthy environment was not unclear on the basis of lacking a detailed description of the specific areas in which the environment should be made the highest priority. Matter of Title, Ballot Title and Submission Clause for 2015-2016 #63, 2016 CO 34, 370 P.3d 628 (Colo. 2016).

17 Forrester v. Martin, 2011 Ark. 277, 383 S.W.3d 375 (2011).

18 Forrester v. Martin, 2011 Ark. 277, 383 S.W.3d 375 (2011).

19 Department of State v. Hollander, 256 So. 3d 1300 (Fla. 2018).

20 Advisory Opinion to the Attorney General re Raising Florida's Minimum Wage, 285 So. 3d 1273 (Fla. 2019).

21 Rose v. Martin, 2016 Ark. 339, 500 S.W.3d 148 (2016).

22 Blake v. King, 185 P.3d 142 (Colo. 2008).

23 Coburn v. Mayer, 368 S.W.3d 320, 281 Ed. Law Rep. 746 (Mo. Ct. App. W.D. 2012).

24 Stiritz v. Martin, 2018 Ark. 281, 556 S.W.3d 523 (2018).

25 Christian Civic Action Committee v. McCuen, 318 Ark. 241, 884 S.W.2d 605 (1994).

26 In re Initiative Petition No. 342, State Question No. 628, 1990 OK 76, 797 P.2d 331 (Okla. 1990).

27 In re Initiative Petition No. 344, State Question No. 630, 1990 OK 75, 797 P.2d 326 (Okla. 1990); Adams v. Kulongoski, 322 Or. 122, 902 P.2d 1191 (1995).

28 In re Title, Ballot Title, Submission Clause for 2009-2010 No. 45, 234 P.3d 642 (Colo. 2010).

29 In re Title, Ballot Title, Submission Clause for 2009-2010 No. 45, 234 P.3d 642 (Colo. 2010).

30 Department of State v. Florida Greyhound Association, Inc., 253 So. 3d 513 (Fla. 2018).

31 Department of State v. Florida Greyhound Association, Inc., 253 So. 3d 513 (Fla. 2018).

32 In re Advisory Opinion to Atty. Gen. re Use of Marijuana for Certain Medical Conditions, 132 So. 3d 786 (Fla. 2014).

33 Billington v. Carnahan, 380 S.W.3d 586 (Mo. Ct. App. W.D. 2012).

34 Walmsley v. Martin, 2012 Ark. 370, 423 S.W.3d 587 (2012).

35 Stiritz v. Martin, 2018 Ark. 281, 556 S.W.3d 523 (2018).

  

36 Stiritz v. Martin, 2018 Ark. 281, 556 S.W.3d 523 (2018).
The popular name for an initiated measure for an amendment to a constitution to provide for the issuance of certain casino licenses, which name referred to the issuance of licenses without specifying, as detailed in the ballot title, that licensees would be required to conduct casino gaming, was sufficient, where both the ballot title and the proposed issuance of licenses, and the more detailed information in the ballot title, did not conflict with the popular name. Knight v. Martin, 2018 Ark. 280, 556 S.W.3d 501 (2018).

37 Stiritz v. Martin, 2018 Ark. 281, 556 S.W.3d 523 (2018).

38 Stiritz v. Martin, 2018 Ark. 281, 556 S.W.3d 523 (2018).

39 Carson v. Kroger, 351 Or. 508, 270 P.3d 243 (2012).

40 Rasmussen v. Kroger, 350 Or. 281, 253 P.3d 1031 (2011).

41 Carson v. Kroger, 351 Or. 508, 270 P.3d 243 (2012).

42 Towers v. Rosenblum, 354 Or. 125, 310 P.3d 1136 (2013).

43 Fletchall v. Rosenblum, 365 Or. 98, 442 P.3d 193 (2019).

44 Fletchall v. Rosenblum, 365 Or. 98, 442 P.3d 193 (2019).

45 Florida Dept. of State v. Mangat, 43 So. 3d 642 (Fla. 2010).
As to amendment by legislative proposal and resolution, see §§ 29 to 32.

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# 16 Am. Jur. 2d Constitutional Law § 35

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**Constitutional Law**

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**II. Adoption and Amendment of Constitutions**

**C. Amendment of State Constitutions**

**3. Validity of Amendments to State Constitutions**

## § 35. Simultaneous, successive, or conflicting proposals in regard to amendment of state constitutions

Topic Summary | Correlation Table | References

**West's Key Number Digest**

West's Key Number Digest, Constitutional Law 526, 540, 541

Where a constitutional amendment conflicts with preexisting constitutional provisions, the last amendment must prevail since it is the latest expression of the people's will[1] and because the drafters of a constitutional amendment are presumed to know about existing laws and constitutional provisions and to have drafted their provision accordingly.[2] However, the problem of conflicting provisions resulting from the adoption of an initiative proposal cannot always be satisfactorily addressed by the application of the principle of constitutional construction that the most recent amendment necessarily supersedes any existing provisions which are in conflict.[3] Furthermore, the rule is often applied that ordinarily, a state constitution may not be amended by implication except where the language adopted by the voters in approving a new amendment is in clear conflict with existing constitutional provisions.[4] In addition, there is a strong presumption against the implied repeal of a statute or constitutional provision by a subsequent enactment.[5]

State constitutions sometimes make express provision to resolve the problem which exists when two constitutional amendments relating to the same subject are coincidentally submitted to the people for approval.[6] Also, sometimes statutes providing that in case of a conflict in initiative or referendum measures the one receiving the greatest number of affirmative votes prevails apply when two constitutional amendments adopted simultaneously are in material, direct conflict.[7]

Footnotes

1 Duggan v. Beermann, 245 Neb. 907, 515 N.W.2d 788 (1994); State ex rel. City of Princeton v. Buckner, 180 W. Va. 457, 377 S.E.2d 139 (1988).

2 Plymouth Tp. v. Wayne County Bd. of Com'rs, 137 Mich. App. 738, 359 N.W.2d 547 (1984).

3 Fine v. Firestone, 448 So. 2d 984 (Fla. 1984); Lomax v. Lee, 261 Ga. 575, 408 S.E.2d 788 (1991).

4 Duggan v. Beermann, 245 Neb. 907, 515 N.W.2d 788 (1994).

5 Sanford v. Garamendi, 233 Cal. App. 3d 1109, 284 Cal. Rptr. 897 (3d Dist. 1991).

6 Estate of Gibson, 139 Cal. App. 3d 733, 189 Cal. Rptr. 201 (1st Dist. 1983).

7 In re Interrogatories Propounded by Senate Concerning House Bill 1078, 189 Colo. 1, 536 P.2d 308 (1975).

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**16 Am. Jur. 2d Constitutional Law § 36**

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**II. Adoption and Amendment of Constitutions**

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**3. Validity of Amendments to State Constitutions**

# § 36. Amendments to state constitutions embracing more than one subject

Topic Summary | Correlation Table | References

**West's Key Number Digest**

West's Key Number Digest, Constitutional Law 552 to 555

**Forms**

Am. Jur. Pleading and Practice Forms, Constitutional Law § 42 (Complaint, petition, or declaration—Allegation—More than one subject in act)

In the context of amendment of a state constitution, each amendment must consist of only one subject;[1] this requirement is known as the "single subject rule."[2] The single-subject requirement for citizen initiative amendments is at its base a rule of restraint designed to protect a state's organic law from precipitous and cataclysmic change.[3] The purpose of the one general subject rule for proposed constitutional amendments is to prevent imposition upon or deceit of the public.[4] Also, the purpose of a state constitution's single-subject requirement is to prevent a proposed constitutional amendment from engaging in either of two practices: (a) logrolling, or (b) substantially altering or performing the functions of multiple branches of state government.[5] "Logrolling" refers to a practice whereby a citizen initiative amendment is proposed which contains unrelated provisions, some of which electors might wish to support, in order to get an otherwise disfavored provision passed.[6]

  

All of the propositions contained in a constitutional amendment must tend to effect or carry out one general purpose.[7] Multiple provisions of an initiative petition must be interrelated and interdependent, forming an interlocking package, in order to comply with the requirement of one general subject.[8] Enfolding disparate subjects within the cloak of a broad generality does not satisfy the single-subject requirement for citizen initiative amendments of a state constitution.[9] In evaluating whether a proposed citizen initiative amendment violates the single-subject requirement, the court must determine whether it has a logical and natural oneness of purpose.[10] The single-subject rule requires courts to determine whether all of the parts of the constitutional amendment are germane to the accomplishment of a single objective,[11] which necessarily excludes the possibility that they will be unrelated to one another.[12] When testing the germaneness of a proposed constitutional amendment submitted to voters, the court looks to whether each of its several facets bears a common concern or impacts one general object or subject.[13] The standard for the single-subject rule is satisfied so long as the law or amendment addresses a single substantive area of law, even if it includes a wide range of connected matters intended to accomplish the goal of that single subject.[14] In the germaneness test, the court does not base its analysis merely on the relation of a new article's sections to a single statement of purpose such as a fund name, but on their relationship to each other and their combined, common purpose.[15] The common purpose or principle analysis applied under the single amendment rule requires the court to analyze two components: first, the proposed amendment's provisions must be topically related, and the provisions must embrace the same general topic, and second, the provisions must be sufficiently interrelated so as to form a consistent and workable proposition that logically speaking should stand or fall as a whole.[16]

An initiative proposal that has at least two distinct and separate purposes which are not dependent upon or connected with each other violates the single-subject requirement;[17] the subject matter of an initiative cannot be disconnected or incongruous.[18] Courts are, however, reluctant to overturn a legislative determination that a proposed amendment involves only one general object or purpose.[19] Proposed constitutional amendments will be liberally and nonrestrictively construed so that provisions connected with or incident to effectuating the central purpose will not be treated as separate subjects.[20] It is permissible for the objective, or subject matter, of an act or constitutional amendment to be broad, and the state general assembly may include in a single act or constitutional amendment all matters having a logical or natural connection without violating the single-subject rule.[21] Furthermore, a proposed initiative may amend several articles in the constitution so long as all proposals are germane to a single purpose.[22] Also, a proposed constitutional amendment is not invalid under the single-subject rule merely because it affects more than one branch of government or may interact with other provisions of the constitution, although when a proposed constitutional amendment substantially alters or performs the functions of multiple branches, it violates the single-subject test.[23] Whether an initiative violates the separate amendment rule presents a question of law.[24] On review of a proposed initiative measure under the single-subject requirement, the court applies general rules of statutory construction and accords the language of the initiative its plain meaning.[25]

A one-sentence initiative asking voters to decide if a constitutional provision should be repealed meets all of the requirements of a single subject and, indeed, on its face reflects a single subject.[26] If various proposed constitutional amendments within an initiative petition all properly fall within the scope of a single article of the state constitution, those amendments will generally be considered to address one subject and matters properly connected therewith, in compliance with the single-subject requirement.[27]

A proposed initiative contains multiple subjects and violates the single-subject rule not only when it proposes new provisions constituting multiple subjects but also when it proposes to repeal multiple subjects.[28] Furthermore, the directive that an initiative position must not contain more than one subject and matters properly connected therewith applies equally to initiatives which propose to amend or revise existing articles of the constitution, and to initiatives which propose to adopt new articles.[29]

  

A single-subject requirement may apply only to the citizen initiative method of amending a constitution[30] because the citizen initiative process does not afford the same opportunity for public hearing and debate that accompanies other constitutional proposal and drafting processes.[31] In such a state, amendments proposed by a state constitution revision commission are not bound by the single-subject rule limiting amendments to one subject.[32] A constitution revision commission has authority to revise the entire constitution or any part of it, and thus the constitution expressly authorizes the commission to bundle proposals on separate subjects; the power to amend the whole constitution in one proposal necessarily includes the lesser power to amend parts of the constitution in one proposal.[33]

A constitutional requirement that petitions for constitutional amendments not contain more than a single article does not prohibit voters from approving or rejecting a constitutional amendment proposed by initiative petition simply because the proposed amendment may, if and when it goes into operation, be construed to alter or affect the application of a preexisting constitutional provision.[34]



Footnotes

1 In re Title, Ballot Title, Submission Clause for 2007-2008 |62, 184 P.3d 52 (Colo. 2008); Advisory Opinion to the Attorney General re Voter Approval of Constitutional Amendments, 2020 WL 827927 (Fla. 2020); Stop Slots MD 2008 v. State Bd. of Elections, 424 Md. 163, 34 A.3d 1164 (2012); State ex rel. Loontjer v. Gale, 288 Neb. 973, 853 N.W.2d 494 (2014); Oklahoma Independent Petroleum Association v. Potts, 2018 OK 24, 414 P.3d 351, 353 Ed. Law Rep. 497 (Okla. 2018), as amended, (Mar. 21, 2018); Lincoln Interagency Narcotics Team v. Kitzhaber, 341 Or. 496, 145 P.3d 151 (2006).
A proposed state constitutional amendment submitted for electors' approval, containing three provisions governing interest rates allowed to be charged by governmental units and by private entities, did not violate the separate issue requirement of the portion of the state constitution governing procedure for proposing a constitutional amendment through the state general assembly; the general subject of the proposed amendment was economic development and debt obligations, and each provision concerned interest paid on debt obligations and economic development. Forrester v. Martin, 2011 Ark. 277, 383 S.W.3d 375 (2011).

2 Fulton County v. City of Atlanta, 305 Ga. 342, 825 S.E.2d 142 (2019).

3 In re Advisory Opinion to Atty. Gen. re Limits or Prevents Barriers to Local Solar Electricity Supply, 177 So. 3d 235 (Fla. 2015).

4 In re Initiative Petition No. 403, 2016 OK 1, 367 P.3d 472, 328 Ed. Law Rep. 420 (Okla. 2016).

5 Advisory Opinion to the Attorney General re Citizenship Requirement to Vote in Florida Elections, 2020 WL 238555 (Fla. 2020).

6 Advisory Opinion to Atty. Gen. re Rights of Electricity Consumers regarding Solar Energy Choice, 188 So. 3d 822 (Fla. 2016).

7 McConkey v. Van Hollen, 2010 WI 57, 326 Wis. 2d 1, 783 N.W.2d 855 (2010).

8 Oklahoma Association of Optometric Physicians v. Raper, 2018 OK 13, 412 P.3d 1160 (Okla. 2018).

9 In re Advisory Opinion to Atty. Gen. re Limits or Prevents Barriers to Local Solar Electricity Supply, 177 So. 3d 235 (Fla. 2015).

10 Advisory Opinion to Atty. Gen. re Rights of Electricity Consumers regarding Solar Energy Choice, 188 So. 3d 822 (Fla. 2016).

11 Fulton County v. City of Atlanta, 305 Ga. 342, 825 S.E.2d 142 (2019).

12 Oklahoma Oil & Gas Association v. Thompson, 2018 OK 26, 414 P.3d 345 (Okla. 2018).

13 In re Initiative Petition No. 420, State Question No. 804, 2020 OK 9, 2020 WL 549253 (Okla. 2020), as corrected, (Feb. 7, 2020).

14 State v. Mercer, 269 Or. App. 135, 344 P.3d 109 (2015).

15 Oklahoma Oil & Gas Association v. Thompson, 2018 OK 26, 414 P.3d 345 (Okla. 2018).

16 Bentley v. Building Our Future, 217 Ariz. 265, 172 P.3d 860 (Ct. App. Div. 1 2007).

17 In re Title, Ballot Title, Submission Clause for 2011-2012 No. 45, 2012 CO 26, 274 P.3d 576 (Colo. 2012).
18 In re Title, Ballot Title, Submission Clause for 2011-2012 No. 45, 2012 CO 26, 274 P.3d 576 (Colo. 2012).
19 City of Raton v. Sproule, 1967-NMSC-141, 78 N.M. 138, 429 P.2d 336 (1967); State ex rel. Roahrig v. Brown, 30 Ohio St. 2d 82, 59 Ohio Op. 2d 104, 282 N.E.2d 584 (1972); In re Initiative Petition No. 271, State Question No. 408, 1962 OK 178, 373 P.2d 1017 (Okla. 1962).
20 Kuehner v. Kander, 442 S.W.3d 224, 310 Ed. Law Rep. 558 (Mo. Ct. App. W.D. 2014).
21 Fulton County v. City of Atlanta, 305 Ga. 342, 825 S.E.2d 142 (2019).
22 Committee For A Healthy Future, Inc. v. Carnahan, 201 S.W.3d 503 (Mo. 2006).
23 Advisory Opinion to Attorney General re Standards For Establishing Legislative Dist. Boundaries, 2 So. 3d 175 (Fla. 2009).
24 Arizona Together v. Brewer, 214 Ariz. 118, 149 P.3d 742 (2007).
25 In re Title, Ballot Title, Submission Clause for 2009-2010 No. 91, 235 P.3d 1071 (Colo. 2010).
26 Matter of Title, Ballot Title and Submission Clause for 2019-2020 #3, 2019 CO 57, 442 P.3d 867 (Colo. 2019).
27 Ritter v. Ashcroft, 561 S.W.3d 74 (Mo. Ct. App. W.D. 2018).
28 In re Title, Ballot Title, Submission Clause for 2007-2008 |62, 184 P.3d 52 (Colo. 2008).
29 Ritter v. Ashcroft, 561 S.W.3d 74 (Mo. Ct. App. W.D. 2018).
30 Advisory Opinion to Atty. Gen. re Term Limits Pledge, 718 So. 2d 798 (Fla. 1998).
31 Advisory Opinion to Atty. Gen. re Rights of Electricity Consumers regarding Solar Energy Choice, 188 So. 3d 822 (Fla. 2016).
32 Detzner v. Anstead, 256 So. 3d 820 (Fla. 2018).
33 Detzner v. Anstead, 256 So. 3d 820 (Fla. 2018).
34 Boeving v. Kander, 496 S.W.3d 498 (Mo. 2016).

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**16 Am. Jur. 2d Constitutional Law § 37**

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**II. Adoption and Amendment of Constitutions**

**C. Amendment of State Constitutions**

**3. Validity of Amendments to State Constitutions**

# § 37. Separate-vote requirement in regard to amendment of state constitutions

Topic Summary | Correlation Table | References

**West's Key Number Digest**

West's Key Number Digest, Constitutional Law 551

Some states have a separate-vote requirement,[1] which is distinguished from the single-subject requirement.[2] The separate-vote requirement for revision of a state constitution pertains to submission of a proposed amendment, providing that if more than one constitutional amendment is presented to voters during the same election, voters must have the option to vote on each amendment separately.[3] The separate-vote requirement of a state constitution is aimed at ensuring that the voters are able to express their will in one vote as to only one constitutional change;[4] voters must be allowed to express their separate opinion as to each proposed constitutional amendment.[5] The separate-vote requirement for revision of state constitutional amendments serves as an important check on the initiative process, confirming the integrity of the vote and ensuring the voters actually approve of a particular amendment.[6]

In determining whether a proposition complies with the separate amendment rule of a state constitution, the court examines whether provisions of the proposed amendment are sufficiently related to a common purpose or principle that the proposal can be said to constitute a consistent and workable whole on the general topic embraced, that, logically speaking, should stand or fall as a whole.[7] In determining whether submission of a proposed constitutional amendment to voters violates the state constitutional separate-vote requirement, numerous factors may be considered in determining whether the provisions of a proposed constitutional amendment are closely related, including (1) whether various provisions are facially related, whether all the matters addressed by the proposition concern a single section of the constitution; (2) whether the voters or the legislature historically has treated the matters addressed as one subject; and (3) whether the various provisions are qualitatively similar in their effect on either procedural or substantive law.[8] Moreover, the proper inquiry in determining whether submission of

  

a proposed constitutional amendment to voters violates the constitutional separate-vote requirement is whether, if adopted, the proposal would make two or more changes to the constitution that are substantive and not closely related.[9] If a proposed constitutional amendment adds new matter to the constitution, that proposition is at least one change in and of itself; then, if a measure has the effect of modifying an existing constitutional provision, it proposes at least one additional change to the constitution, whether that effect is express or implicit.[10]

A state court reviews de novo whether a proposition complies with the rule under a state constitution requiring that voters be allowed, when one more than one constitutional amendment is proposed, to vote for or against each one separately.[11] The fact that the objectives of a constitutional measure could be achieved by an alternative means does not itself establish a violation of the rule under a state constitution requiring that voters be allowed, when more than one constitutional amendment is proposed, to vote for or against each one separately.[12]



Footnotes

1 Arizona Together v. Brewer, 214 Ariz. 118, 149 P.3d 742 (2007); In re Title, Ballot Title, Submission Clause for 2007-2008 |62, 184 P.3d 52 (Colo. 2008); Montana Association of Counties v. State by and through Fox, 2017 MT 267, 389 Mont. 183, 404 P.3d 733 (2017); Lincoln Interagency Narcotics Team v. Kitzhaber, 341 Or. 496, 145 P.3d 151 (2006).

2 Montana Association of Counties v. State by and through Fox, 2017 MT 267, 389 Mont. 183, 404 P.3d 733 (2017).
As to single-subject requirement, see § 36.

3 Arizona Together v. Brewer, 214 Ariz. 118, 149 P.3d 742 (2007); In re Title, Ballot Title, Submission Clause for 2007-2008 |62, 184 P.3d 52 (Colo. 2008); Montana Association of Counties v. State by and through Fox, 2017 MT 267, 389 Mont. 183, 404 P.3d 733 (2017); Lincoln Interagency Narcotics Team v. Kitzhaber, 341 Or. 496, 145 P.3d 151 (2006).

4 State v. Rogers, 352 Or. 510, 288 P.3d 544 (2012).

5 McLaughlin v. Bennett, 225 Ariz. 351, 238 P.3d 619 (2010).

6 Montana Association of Counties v. State by and through Fox, 2017 MT 267, 389 Mont. 183, 404 P.3d 733 (2017).

7 Save Our Vote, Opposing C-03-2012 v. Bennett, 231 Ariz. 145, 291 P.3d 342 (2013).

8 Montana Association of Counties v. State by and through Fox, 2017 MT 267, 389 Mont. 183, 404 P.3d 733 (2017).

9 Montana Association of Counties v. State by and through Fox, 2017 MT 267, 389 Mont. 183, 404 P.3d 733 (2017); Martinez v. Kulongoski, 220 Or. App. 142, 185 P.3d 498 (2008).

10 Montana Association of Counties v. State by and through Fox, 2017 MT 267, 389 Mont. 183, 404 P.3d 733 (2017).

11 Save Our Vote, Opposing C-03-2012 v. Bennett, 231 Ariz. 145, 291 P.3d 342 (2013).

12 Save Our Vote, Opposing C-03-2012 v. Bennett, 231 Ariz. 145, 291 P.3d 342 (2013).

# 16 Am. Jur. 2d Constitutional Law § 38

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**II. Adoption and Amendment of Constitutions**

**C. Amendment of State Constitutions**

**3. Validity of Amendments to State Constitutions**

## § 38. "One person-one vote" principle in regard to amendment of state constitutions; number and count of votes

Topic Summary | Correlation Table | References

**West's Key Number Digest**

West's Key Number Digest, Constitutional Law 567

**A.L.R. Library**

Validity of Super-Majority Voting Requirements in Constitutional, Statutory, and Other Public Provisions, 28 A.L.R.6th 439

A constitutional requirement of a two-thirds favorable vote in every county with respect to a proposed amendment when there is a wide disparity in population among the counties results in greatly disproportionate values to votes in the different counties and, therefore, does not meet the "one person-one vote" concept.[1] Some courts see no rational basis to distinguish between voting on representatives in the legislature and voting on constitutional amendments since one is no more a necessary ingredient of our democratic process than the other, nor can it be said that an equal voice in the selection of the legislature is of greater importance to a citizen than equality of weight in an expression of views on changes in the basic charter, that is, the constitution.[2]

Some state constitutions require for ratification that a majority of the electors vote on the amendment in question, and it has been held that a simple majority as to each amendment is adequate without reference to the number of votes cast on other propositions at the same election.[3] In other states, a similar provision has been held to require a majority of all the voters voting at the election

  

at which the proposed amendment is submitted, and a mere majority of those voting on the amendment itself has been deemed insufficient.[4] Elsewhere, a "majority of the votes cast" or "majority of the electors voting" means only a majority of the votes cast on the particular proposition, not the majority of the highest vote for any purpose to which the election pertained.[5] Blank, unintelligible, fouled, void, or illegal ballots are not counted.[6]

While a proposed constitutional amendment becomes a part of the constitution if adopted by the vote of the people, it cannot take effect and become operative until the final tabulation and determination in accordance with the state's election law.[7]



Footnotes

1 State ex rel. Witt v. State Canvassing Bd., 1968-NMSC-017, 78 N.M. 682, 437 P.2d 143 (1968).
As to the "one person-one vote" concept, generally, see Am. Jur. 2d, Elections § 22.

2 State ex rel. Witt v. State Canvassing Bd., 1968-NMSC-017, 78 N.M. 682, 437 P.2d 143 (1968).

3 Lee v. State, 13 Utah 2d 15, 367 P.2d 861 (1962).

4 State ex rel. White v. Hathaway, 478 P.2d 56 (Wyo. 1970).

5 State ex rel. Witt v. State Canvassing Bd., 1968-NMSC-017, 78 N.M. 682, 437 P.2d 143 (1968).

6 State ex rel. Cashmore v. Anderson, 160 Mont. 175, 500 P.2d 921 (1972).

7 Opinion of the Justices, 362 Mass. 907, 287 N.E.2d 910 (1972).

# 16 Am. Jur. 2d Constitutional Law § 39

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**II. Adoption and Amendment of Constitutions**

**C. Amendment of State Constitutions**

**4. Judicial Review of Amendments to State Constitutions**

## § 39. Judicial intervention in, or supervision of, state constitutional amendment proceedings, generally

Topic Summary | Correlation Table | References

**West's Key Number Digest**

West's Key Number Digest, Constitutional Law 569 to 573

Each citizen has a right to protest the sufficiency and legality of an initiative petition, and the safeguards afforded the individual challenging a measure are as necessary to the protection of the right as are those granted the proponent.[1] There are two stages for challenging an initiative-driven constitutional amendment: (1) preelection, as to form, and (2) postelection, as to substance.[2] Prior to the presentation of an initiative to the people, courts may consider only procedural or ballot issues that have a bearing upon the integrity of the election itself.[3] It is the court's judicial duty to preserve the right of the voters to change a state's constitution wherever possible and to decline to interfere unless it appears to be absolutely essential.[4] A part of the courts' duty and responsibility in this regard consists of ensuring that when voters exercise their right to change a constitutional provision through the initiative process, they are allowed to make an intelligent choice, fully aware of the consequences of their vote.[5] Courts have an obligation to liberally construe the provisions of a state constitution relating to the initiative power[6] to assure that the initiative process is not directly or indirectly annulled.[7]

When initiative petitions are challenged, the court's primary duty is to determine whether the constitutional requirements and limits of power, as expressed in the provisions relating to the procedure and form of initiative petitions, have been regarded.[8] In reviewing the validity of a proposed constitutional amendment, the court's sole task is to determine whether the ballot language sets forth the substance of the amendment in a manner consistent with the applicable statute.[9] The court limits its review of a ballot question to the sufficiency of the language used and is not concerned with the question of whether the court, or any of

  

the numerous advocates on either side of the issue, are capable of drafting better ballot language.[10] Although the polestar of the court's analysis of a ballot's language is the candor and accuracy with which the ballot language informs the voters of a proposed amendment's effects, voters may be presumed to have the ability to reason and draw logical conclusions from the information they are given.[11] A deferential standard of review applies to the review of the validity of an initiative petition; in order for a proposed amendment to be invalidated, the record must show that the proposal is clearly and conclusively defective.[12] When evaluating whether a proposed amendment's ballot language is clearly and conclusively defective, a court must look not to subjective criteria espoused by the amendment's sponsor but to objective criteria inherent in the amendment itself, such as the amendment's main effect;[13] this evaluation requires consideration of the ballot proposal's true meaning and ramifications.[14] Alleged errors in the form of initiative petitions are reviewed for substantial compliance with statutory requirements,[15] and descriptive information included on initiative petition signature sheets will not invalidate the petitions unless it is fraudulent or creates a significant danger of confusion or unfairness.[16] The court alone is to determine whether constitutional requirements for a proposed amendment through a ballot initiative were satisfied, but that role does not require the court to read between the lines of every proposal in an attempt to discern the propriety of the proponent's underlying intentions.[17]

The power of a court to intervene in amendment proceedings is not without limits.[18] For instance, the courts make no attempt to judge the merits,[19] wisdom,[20] or the desirability of enacting initiative amendments.[21] The court's function is merely to review the measure to ensure that, if it is presented to the people for consideration in a popular vote, it is presented fairly[22] and to ensure compliance of the petition with the requirements of the state's constitution and statutes.[23] When courts are called upon to intervene in the initiative process, they must act with restraint, trepidation, and a healthy suspicion of the partisan who would use the judiciary to prevent the initiative process from taking its course.[24]

Courts evaluating a proposed ballot that addresses a constitutional amendment are required to direct the removal of matters from the ballot where the required summary does not inform the voters of the true effect of the ballot proposal.[25] A court exercises extreme care, caution, and restraint before striking a proposed constitutional amendment from the ballot,[26] and the court is obligated to uphold a proposed constitutional amendment arising through the citizen initiative process unless it is clearly and conclusively defective.[27] If the ballot language does not satisfy the requirements of the law, the court cannot rewrite it to correct its flaws: the only remedy is for the proposed amendment to be stricken from the ballot.[28]

**Observation:**

A court's decision to approve or disapprove a proposed amendment's ballot language should not be construed as approval or disapproval of its substance.[29]

In determining the validity of a legislative proposal containing a constitutional amendment for submission to the public, the only proper question for the court on review is whether the form of the ballot actually used complies with the state's constitution; in other words, the court's review is limited to determining whether the ballot question as framed is so unreasonable and misleading as to be a palpable evasion of the constitutional requirement to submit the law to a popular vote.[30] Petitioners challenging the validity of such a legislative proposal bear the burden of demonstrating that the ballot question as framed is so unreasonable and

  

misleading as to be a palpable evasion of the constitutional requirement to submit the law to a popular vote and that therefore an error exists that the court must correct.[31] When a court construes a constitutional amendment that is proposed by the legislature, it will read the ballot title together with the text of the measure, even if the text of the measure contains no ambiguities or absurdities, in order to determine the meaning and scope of the amendment according to those who framed and adopted it.[32] In determining the validity of a legislative proposal containing a constitutional amendment for submission to the public, a state supreme court, in its review process, must evaluate the ballot question with a high degree of deference to the legislature.[33] However, that deference is not boundless where the constitution imposes strict minimum requirements that apply across-the-board to all constitutional amendments, including those arising in the legislature.[34] Moreover, unlike legislatively referred constitutional amendments that have been submitted to and adopted by the voters, there is no presumption of constitutionality afforded by the court during its review of preelection-proposed amendments that have not been voted on and adopted or approved by the public.[35] A state court will act to invalidate a legislatively proposed constitutional amendment only when it is clearly incompatible with a statutory or constitutional mandate.[36]

A court cannot review the form and substance of a ballot question for a proposed constitutional amendment that the legislature, in its discretion, has submitted for a popular vote simply because the court may believe the question was not phrased in the best or fairest terms.[37]



Footnotes

1 In re Initiative Petition No. 379, State Question No. 726, 2006 OK 89, 155 P.3d 32 (Okla. 2006).

2 Hughes v. Hosemann, 68 So. 3d 1260 (Miss. 2011).
As to postelection challenge to validity of amendment, see § 41.

3 Prentzler v. Carnahan, 366 S.W.3d 557 (Mo. Ct. App. W.D. 2012).

4 Montanans for Justice v. State ex rel. McGrath, 2006 MT 277, 334 Mont. 237, 146 P.3d 759 (2006).

5 In re Advisory Opinion to the Attorney General-Restricts Laws Related to Discrimination, 632 So. 2d 1018 (Fla. 1994); Kimmelman v. Burgio, 204 N.J. Super. 44, 497 A.2d 890 (App. Div. 1985); State ex rel. Bailey v. Celebrezze, 67 Ohio St. 2d 516, 21 Ohio Op. 3d 463, 426 N.E.2d 493 (1981).

6 Perry v. Brown, 52 Cal. 4th 1116, 134 Cal. Rptr. 3d 499, 265 P.3d 1002 (2011); Rothenberg v. Husted, 129 Ohio St. 3d 447, 2011-Ohio-4003, 953 N.E.2d 327 (2011).

7 Perry v. Brown, 52 Cal. 4th 1116, 134 Cal. Rptr. 3d 499, 265 P.3d 1002 (2011).

8 Brown v. Carnahan, 370 S.W.3d 637 (Mo. 2012).

9 County of Volusia v. Detzner, 253 So. 3d 507 (Fla. 2018).

10 Stop Slots MD 2008 v. State Bd. of Elections, 424 Md. 163, 34 A.3d 1164 (2012).

11 Department of State v. Florida Greyhound Association, Inc., 253 So. 3d 513 (Fla. 2018).

12 Advisory Opinion to the Attorney General re Citizenship Requirement to Vote in Florida Elections, 2020 WL 238555 (Fla. 2020).

13 Department of State v. Florida Greyhound Association, Inc., 253 So. 3d 513 (Fla. 2018).

14 Let Miami Beach Decide v. City of Miami Beach, 120 So. 3d 1282 (Fla. 3d DCA 2013).

15 Save Our Vote, Opposing C-03-2012 v. Bennett, 231 Ariz. 145, 291 P.3d 342 (2013).

16 Save Our Vote, Opposing C-03-2012 v. Bennett, 231 Ariz. 145, 291 P.3d 342 (2013).

17 Hooker v. Illinois State Bd. of Elections, 2016 IL 121077, 407 Ill. Dec. 392, 63 N.E.3d 824 (Ill. 2016).

18 Finn v. McCuen, 303 Ark. 418, 798 S.W.2d 34 (1990) (overruled on other grounds by, Stilley v. Priest, 341 Ark. 329, 16 S.W.3d 251 (2000)); Advisory Opinion to the Attorney General re Raising Florida's Minimum Wage, 285 So. 3d 1273 (Fla. 2019).

19 Cox v. Martin, 2012 Ark. 352, 423 S.W.3d 75 (2012); In re Advisory Opinion to Atty. Gen. re Use of Marijuana for Certain Medical Conditions, 132 So. 3d 786 (Fla. 2014).

20 Rose v. Martin, 2016 Ark. 339, 500 S.W.3d 148 (2016); Advisory Opinion to the Attorney General re Raising Florida's Minimum Wage, 285 So. 3d 1273 (Fla. 2019); State ex rel. Johnson v. Gale, 273 Neb. 889, 734 N.W.2d 290 (2007).

21 State ex rel. Johnson v. Gale, 273 Neb. 889, 734 N.W.2d 290 (2007).

22 Rose v. Martin, 2016 Ark. 339, 500 S.W.3d 148 (2016).

23 Advisory Opinion to the Attorney General re Raising Florida's Minimum Wage, 285 So. 3d 1273 (Fla. 2019).

24 Missouri Mun. League v. Carnahan, 364 S.W.3d 548 (Mo. Ct. App. W.D. 2011).

25 Let Miami Beach Decide v. City of Miami Beach, 120 So. 3d 1282 (Fla. 3d DCA 2013).

26 County of Volusia v. Detzner, 253 So. 3d 507 (Fla. 2018).

27 Advisory Opinion to the Attorney General Re: Voting Restoration Amendment, 215 So. 3d 1202 (Fla. 2017).

28 Department of State v. Florida Greyhound Association, Inc., 253 So. 3d 513 (Fla. 2018).

29 Department of State v. Florida Greyhound Association, Inc., 253 So. 3d 513 (Fla. 2018).

30 League of Women Voters Minnesota v. Ritchie, 819 N.W.2d 636 (Minn. 2012).

31 League of Women Voters Minnesota v. Ritchie, 819 N.W.2d 636 (Minn. 2012).

32 Awad v. Ziriax, 670 F.3d 1111 (10th Cir. 2012) (applying Oklahoma law).

33 League of Women Voters Minnesota v. Ritchie, 819 N.W.2d 636 (Minn. 2012).

34 Florida Educ. Ass'n v. Florida Dept. of State, 48 So. 3d 694, 262 Ed. Law Rep. 723 (Fla. 2010).

35 Martin v. Humphrey, 2018 Ark. 295, 558 S.W.3d 370 (2018).

36 City and County of Honolulu v. State, 143 Haw. 455, 431 P.3d 1228 (2018).

37 Breza v. Kiffmeyer, 723 N.W.2d 633 (Minn. 2006).

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## 16 Am. Jur. 2d Constitutional Law § 40

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**II. Adoption and Amendment of Constitutions**

**C. Amendment of State Constitutions**

**4. Judicial Review of Amendments to State Constitutions**

# § 40. Judicial review of ballot titles in state constitutional amendment proceedings

Topic Summary | Correlation Table | References

**West's Key Number Digest**

West's Key Number Digest, Constitutional Law 569 to 573

The court's duty is to ensure that the ballot title fairly reflects the proposed initiative so that petition signers and voters will not be misled into support for or against a proposition by reason of the words employed.[1] The court's most significant rule in determining the sufficiency of a ballot title for a proposed constitutional amendment is that the title be given a liberal construction and interpretation in order that it secure the purposes of reserving to the people the right to adopt, reject, approve, or disapprove legislation;[2] however, this approach does not imply that liberality is boundless or that common sense is disregarded.[3]

When reviewing a challenge to a ballot title for a proposed constitutional amendment, the court recognizes that the burden is upon the party challenging the ballot title.[4] A court will invalidate the title of a proposed constitutional amendment to be placed before the voters by way of initiative if the title is insufficient, unfair, or misleading,[5] and the burden for invalidating an amendment on the ground of an inadequate or misleading title is heavy.[6] Additionally, relief may be granted upon clear and convincing proof that the challenged ballot materials in question are false, misleading, or inconsistent with the requirements of the election code.[7] A difference of opinion does not rise to the level of clear and convincing proof that the challenged language in a ballot initiative title and the ballot label is misleading.[8]

When reviewing the sufficiency of a ballot title for an initiative for a proposed constitutional amendment, the court is neither to interpret a proposed amendment[9] nor discuss its merits[10] or faults.[11] Also, on judicial review of the title of a constitutional amendment to be placed before the voters by way of initiative, the courts do not demand that the drafting entity draft the

  

best possible titles.[12] In analyzing whether a ballot title clearly and unambiguously informs the voters of the chief purpose of a proposed constitutional amendment, a court must look to objective criteria inherent in the amendment itself, such as the amendment's main effect.[13] The ultimate inquiry in a challenge to a ballot title of a proposed amendment to the state constitution is whether a voter, while inside the voting booth, is able to reach an intelligent and informed decision for or against the proposal and understands the consequences of his or her vote based on the ballot title.[14]

An appellate court reviews de novo the trial court's ruling regarding the validity of the ballot language of the title of a proposed constitutional amendment to be submitted to the vote of the people.[15]



Footnotes

1 In re Title, Ballot Title, Submission Clause for 2009-2010 No. 45, 234 P.3d 642 (Colo. 2010).

2 Rose v. Martin, 2016 Ark. 339, 500 S.W.3d 148 (2016).

3 Rose v. Martin, 2016 Ark. 339, 500 S.W.3d 148 (2016).

4 Rose v. Martin, 2016 Ark. 339, 500 S.W.3d 148 (2016).

5 Blake v. King, 185 P.3d 142 (Colo. 2008).

6 City of Glendale v. Buchanan, 195 Colo. 267, 578 P.2d 221 (1978).

7 Yes on 25, Citizens for an On-Time Budget v. Superior Court, 189 Cal. App. 4th 1445, 118 Cal. Rptr. 3d 290 (3d Dist. 2010).

8 Yes on 25, Citizens for an On-Time Budget v. Superior Court, 189 Cal. App. 4th 1445, 118 Cal. Rptr. 3d 290 (3d Dist. 2010).

9 Richardson v. Martin, 2014 Ark. 429, 444 S.W.3d 855 (2014).

10 Richardson v. Martin, 2014 Ark. 429, 444 S.W.3d 855 (2014); Detzner v. League of Women Voters of Florida, 256 So. 3d 803, 361 Ed. Law Rep. 466 (Fla. 2018).

11 Richardson v. Martin, 2014 Ark. 429, 444 S.W.3d 855 (2014).

12 Blake v. King, 185 P.3d 142 (Colo. 2008).

13 Advisory Opinion to the Attorney General re Citizenship Requirement to Vote in Florida Elections, 2020 WL 238555 (Fla. 2020).

14 Stiritz v. Martin, 2018 Ark. 281, 556 S.W.3d 523 (2018).

15 Department of State v. Hollander, 256 So. 3d 1300 (Fla. 2018).

# 16 Am. Jur. 2d Constitutional Law § 41

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**II. Adoption and Amendment of Constitutions**

**C. Amendment of State Constitutions**

**4. Judicial Review of Amendments to State Constitutions**

## § 41. Validity of state constitutional amendments upon judicial review

Topic Summary | Correlation Table | References

**West's Key Number Digest**

West's Key Number Digest, Constitutional Law 569 to 572

A state supreme court has authority to conduct a postelection review to determine whether a proposed constitutional amendment is constitutional,[1] and courts have exercised the authority to determine the validity of proposals, submissions, or ratifications of changes in the organic law.[2] The question of the validity of the adoption of an amendment to the constitution is a judicial[3] and not a political question.[4] In reaching a decision, the legislative history and historical background of an amendment can be of assistance should there be an ambiguity in the constitutional language which the court may be called upon to resolve or interpret.[5] An initiative petition may be rejected as clearly unconstitutional only if controlling authority leaves no room for argument about its unconstitutionality.[6]

In conducting its review of the people's amendment to their constitution, a reviewing court should make no attempt to judge the wisdom or the desirability of enacting the amendment.[7] Furthermore, the fact that a new amendment may conflict with existing articles or sections of a state constitution can afford no logical basis for invalidating the new amendment.[8]

Generally, questions regarding the constitutionality of proposed constitutional amendments are left for such time as it is properly brought before the court to determine the issue; until then, it is up to the people of the state, and not the courts, to weigh the evidence and decide on the wisdom and utility of the issue.[9] Accordingly, judicial review of the constitutionality of an initiative is unavailable until after it has been enacted by the voters, since an opinion on a law not yet enacted is necessarily advisory.[10] However, there are two exceptions to the rule that judicial review of the constitutionality of an initiative is unavailable until

  

after it has been enacted by the voters: first, where the initiative is challenged on the basis that it does not comply with the state's constitutional and statutory provisions regulating initiatives, and second, where the initiative is challenged as clearly unconstitutional or clearly unlawful.[11] Thus, while courts will generally not give advisory opinions as to whether a particular proposal to amend the state constitution would, if adopted, violate some superseding fundamental law, such as the United States Constitution, a court does have some discretion to review allegations that a ballot initiative is facially unconstitutional; this exception to the prohibition against preelection review comes into play where the constitutional violation in a proposed measure is so obvious as to constitute a matter of form.[12] When rendering an advisory opinion concerning a proposed state constitutional amendment arising through the citizen initiative process, a court has no authority to inject itself in the process unless the laws governing the process have been clearly and conclusively violated.[13] The purpose of the advisory opinion review process is to allow the court to rule on the validity of an initiative petition before the sponsor goes to the considerable effort and expense of obtaining the required number of signatures for placement on the ballot.[14]



Footnotes

1 State ex rel. Clark v. State Canvassing Bd., 1995-NMSC-001, 119 N.M. 12, 888 P.2d 458 (1995).
No authority in the United States Constitution would allow the judiciary to set aside an amendment to a state constitution prohibiting affirmative action in public education, employment, and contracting, which had been adopted by the state voters through an initiative following United States Supreme Court decisions concerning the use of racial preferences in state university admissions; although the deliberative debate on sensitive issues such as racial preferences all too often might shade into rancor, that did not justify removing certain court-determined issues from the voters' reach. Schuette v. Coalition to Defend Affirmative Action, Integration and Immigrant Rights and Fight for Equality By Any Means Necessary (BAMN), 572 U.S. 291, 134 S. Ct. 1623, 188 L. Ed. 2d 613, 303 Ed. Law Rep. 30 (2014).

2 Stovall v. Gartrell, 332 S.W.2d 256 (Ky. 1960); State ex rel. Board of Fund Com'rs v. Holman, 296 S.W.2d 482 (Mo. 1956).

3 Graham v. Jones, 198 La. 507, 3 So. 2d 761 (1941); State ex rel. Stutsman v. Light, 68 N.D. 513, 281 N.W. 777 (1938).

4 Graham v. Jones, 198 La. 507, 3 So. 2d 761 (1941).

5 Cummings v. Mickelson, 495 N.W.2d 493 (S.D. 1993).

6 DesJarlais v. State, Office of Lieutenant Governor, 300 P.3d 900 (Alaska 2013).

7 Duggan v. Beermann, 249 Neb. 411, 544 N.W.2d 68 (1996).

8 Omaha Nat. Bank v. Spire, 223 Neb. 209, 389 N.W.2d 269 (1986).

9 South Dakota State Federation of Labor AFL-CIO v. Jackley, 2010 SD 62, 786 N.W.2d 372 (S.D. 2010).

10 DesJarlais v. State, Office of Lieutenant Governor, 300 P.3d 900 (Alaska 2013).

11 DesJarlais v. State, Office of Lieutenant Governor, 300 P.3d 900 (Alaska 2013).

12 Reeves v. Kander, 462 S.W.3d 853 (Mo. Ct. App. W.D. 2015).

13 Advisory Opinion To The Attorney General re Extending Existing Sales Tax To Non-Taxed Services Where Exclusion Fails To Serve Public Purpose, 953 So. 2d 471 (Fla. 2007).

14 Roberts v. Brown, 43 So. 3d 673 (Fla. 2010).

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## 16 Am. Jur. 2d Constitutional Law § 42

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**II. Adoption and Amendment of Constitutions**

**C. Amendment of State Constitutions**

**4. Judicial Review of Amendments to State Constitutions**

# § 42. Validity of state constitutional amendments upon judicial review—Presumption of validity; effect of partial invalidity

Topic Summary | Correlation Table | References

**West's Key Number Digest**

West's Key Number Digest, Constitutional Law 572, 574

Every reasonable presumption is to be indulged in favor of a constitutional amendment which the people have adopted at a general election,[1] and unless the courts are satisfied that the constitution has been violated in the submission of a proposed amendment, they should uphold it.[2] The view has been taken that substance is more important than form and that the will of the legislature lawfully expressed in proposing an amendment and the will of the people expressed at the proper time and in the proper manner in ratifying such amendment ought not to be lightly disregarded.[3]

In accordance with the rules governing the invalidity of portions of a statute, where part of an amendment to a state constitution is invalid because it violates the constitution, if the several parts of the amendment are separable, the valid portions may be saved,[4] unless it is obvious that the intent of the adopters of the amendment was to accept one general scheme in its entirety, in which event, if part of the amendment falls, the whole must fall with it.[5] The factors that are used to determine whether ballot initiative provisions are severable or not are whether the invalid provision is essential to the efficacy of the amendment as a whole, whether it is a provision without which the amendment would be incomplete and unworkable, and whether the provision is one without which the voters would not have adopted the amendment.[6]

Footnotes

1 Table Services, LTD v. Hickenlooper, 257 P.3d 1210 (Colo. App. 2011).

2 State ex rel. Clark v. State Canvassing Bd., 1995-NMSC-001, 119 N.M. 12, 888 P.2d 458 (1995); In re Initiative Petition No. 362 State Question 669, 1995 OK 77, 899 P.2d 1145 (Okla. 1995).

3 Opinion of the Justices, 267 Ala. 666, 104 So. 2d 696 (1958); Palmer v. Dunn, 216 S.C. 558, 59 S.E.2d 158 (1950).

4 Raven v. Deukmejian, 52 Cal. 3d 336, 276 Cal. Rptr. 326, 801 P.2d 1077 (1990).

5 Carpenter v. State, 179 Neb. 628, 139 N.W.2d 541 (1966); McWhirter v. Bridges, 249 S.C. 613, 155 S.E.2d 897 (1967).

6 Missourians to Protect the Initiative Process v. Blunt, 799 S.W.2d 824 (Mo. 1990).

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**II. Adoption and Amendment of Constitutions**

**C. Amendment of State Constitutions**

**4. Judicial Review of Amendments to State Constitutions**

# § 43. Scope of judicial review of state constitutional amendments; technical or minor defects

Topic Summary | Correlation Table | References

**West's Key Number Digest**

West's Key Number Digest, Constitutional Law 569 to 574

The courts have the right to consider whether the legislative department and its agencies have observed constitutional requirements in attempting to amend the constitution and may set aside their acts in case they have not done so.[1] Substance rather than form is to be regarded in considering whether the system prescribed by the constitution for submitting proposals to amend it has been observed.[2] Whether an amendment to a state constitution has been validly proposed and adopted by the electorate depends upon whether substantial compliance or noncompliance with the mandatory provisions of the constitution relative to such matter has been achieved.[3] Neither the legislature nor the people can short-circuit the constitution in the adoption of amendments.[4]

Judicial concern is directed and limited to whether the fundamental law has been complied with and whether the amendment has received the sanction of the popular approval in the prescribed manner.[5] For the courts of a state to go farther and assume jurisdiction to set aside and declare void an amendment of the constitution adopted by the people and so declared by the governor would be an invasion and usurpation by the judiciary of the legislative functions of the people.[6] The adoption of a constitutional amendment by electors constitutes the exercise of a sacred American right, and a court will not invalidate the amendatory language except under the most extreme circumstances.[7]

It has been said that in considering a constitutional amendment after its adoption by the voters, the question for the court is not whether it is possible to condemn the amendment but whether it is possible to uphold it, and it should be sustained unless it plainly and palpably appears to be invalid.[8] All that is required is that the amendment, if adopted, may conceivably be valid in

  

some respect or under some conditions.[9] The burden for invalidating an amendment after adoption is heavy.[10] That part of the amendment may be questionable, ambiguous, or inoperative is of no importance.[11]

Although the procedure outlined in a state's constitution for the adoption of a constitutional amendment is mandatory and must be followed,[12] the courts are reluctant to declare a constitutional amendment which has been adopted by the people invalid on technical grounds.[13] Thus, if a proposed constitutional amendment is published, submitted to a vote of the people, and adopted without any question having been raised prior to the election as to the method by which the amendment gets before them, a favorable vote by the people will cure defects in the form of the submission.[14] The test for determining whether technical defects will invalidate an otherwise valid amendment is whether the cumulative effect of the technical defects is harmless or fatal to the ballot or amendment.[15]



Footnotes

1 Graham v. Jones, 198 La. 507, 3 So. 2d 761 (1941).
As to the general power of courts to declare laws unconstitutional, see §§ 108 to 127.

2 Gray v. Golden, 89 So. 2d 785 (Fla. 1956).

3 Pope v. Gray, 104 So. 2d 841 (Fla. 1958).

4 Stovall v. Gartrell, 332 S.W.2d 256 (Ky. 1960).

5 Graham v. Jones, 198 La. 507, 3 So. 2d 761 (1941).

6 Renck v. Superior Court of Maricopa County, 66 Ariz. 320, 187 P.2d 656 (1947).

7 State ex rel. Rhodes v. Brown, 34 Ohio St. 2d 101, 63 Ohio Op. 2d 189, 296 N.E.2d 538 (1973).

8 Barnhart v. Herseth, 88 S.D. 503, 222 N.W.2d 131 (1974).

9 Pope v. Gray, 104 So. 2d 841 (Fla. 1958).

10 City of Glendale v. Buchanan, 195 Colo. 267, 578 P.2d 221 (1978).

11 Pope v. Gray, 104 So. 2d 841 (Fla. 1958).

12 § 22.

13 Goldner v. Adams, 167 So. 2d 575 (Fla. 1964); State ex rel. Lampson v. Cook, 44 Ohio App. 501, 14 Ohio L. Abs. 304, 185 N.E. 212 (7th Dist. Ashtabula County 1932).

14 Floridians Against Expanded Gambling v. Floridians for a Level Playing Field, 945 So. 2d 553 (Fla. 1st DCA 2006).

15 State ex rel. Bailey v. Celebrezze, 67 Ohio St. 2d 516, 21 Ohio Op. 3d 463, 426 N.E.2d 493 (1981).

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# 16 Am. Jur. 2d Constitutional Law § 44

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**III. Operation and Effect of Constitutions and Amendments**

**A. Operation and Effect of Constitutions and Amendments, in General**

## § 44. Constitutions as grant or limitation of power

Topic Summary | Correlation Table | References

**West's Key Number Digest**

West's Key Number Digest, Constitutional Law 635 to 639

The Constitution of the United States of America creates a federal government of limited,[1] delegated,[2] and enumerated[3] powers which are bestowed only in specific grants.[4] The Constitution's enumeration of powers for the Federal Government is also a limitation of powers because the enumeration presupposes something not enumerated;[5] the Constitution's express conferral of some powers for the Federal Government makes clear that it does not grant others, and the Federal Government can exercise only the powers granted to it.[6] The Federal Constitution is a grant of power to Congress[7] and is a grant of power from the states.[8] The powers delegated by the Federal Constitution to the national government are few and defined while those which remain in the state governments are numerous and indefinite.[9] Because the powers given to Congress are defined in the Federal Constitution, Congress can and must act pursuant only to those powers in enacting legislation.[10] The Constitution is not a document prescribing limits and declaring that those limits may be passed at pleasure.[11] If no enumerated power authorizes Congress to pass a certain law, that law may not be enacted, even if it would not violate any of the express prohibitions in the Bill of Rights or elsewhere in the Constitution.[12]

On the other hand, state constitutions are restraining instruments.[13] State constitutions are not generally regarded as grants of power,[14] but instead are viewed as limitations on the otherwise plenary power of the people of each state to do as they will,[15] which is exercised through the legislature.[16] The provisions of a state constitution are not a license for common-law policymaking but are instead a fixed set of limits on the government's operation.[17] All power which is not expressly limited by the people in a state constitution remains with the people.[18] State constitutional provisions will not be construed to

  

impose limitations beyond their clear meaning.[19] Thus, constitutional restrictions and limitations on a state legislature are to be construed strictly and are not to be extended to include matters not covered by the language used.[20] State constitutions are not only viewed as limitations on the legislative power[21] but also on the executive and judicial powers.[22] The express will of the people, as articulated by them in their constitution, may not be altered, contracted or enlarged by legislative or executive branch enactments or rules.[23] A state constitution is also frequently viewed as a delegation of the people's political powers.[24] Thus, while an Act of Congress is invalid unless the Federal Constitution expressly authorizes it, a state legislature may enact any law which is not prohibited by the state[25] or federal[26] constitutions. Accordingly, where prohibitions do not apply, state governments do not need constitutional authorization to act, and the states thus can and do perform many of the vital functions of modern government, such as punishing street crime, running public schools, and zoning property for development, even though the United States Constitution's text does not authorize any government to do so.[27]

When a state constitution gives a general power, or enjoins a duty, it also gives, by implication, every particular power necessary for the exercise of the one, or the performance of the other.[28] However, where a power is expressly given by a state constitution, and the means by which, or the manner in which it is to be exercised, is prescribed, such means or manner is exclusive of all others.[29]

Because a state constitution is not a grant of power, there is no reason to believe that a constitutional provision enumerating powers of a branch of government is an exclusive list, and a branch of government inherently has powers not included on the list.[30]



Footnotes

1 Seminole Tribe of Florida v. Florida, 517 U.S. 44, 116 S. Ct. 1114, 134 L. Ed. 2d 252 (1996); U.S. v. Bellaizac-Hurtado, 700 F.3d 1245 (11th Cir. 2012); Matter of Dependency of S.K-P., 200 Wash. App. 86, 401 P.3d 442 (Div. 2 2017), aff'd on other grounds, 191 Wash. 2d 872, 427 P.3d 587 (2018).

2 U.S. v. Pappadopoulos, 64 F.3d 522, 42 Fed. R. Evid. Serv. 930 (9th Cir. 1995), as amended on denial of reh'g, (Nov. 13, 1995); Rispo Invest. Co. v. Seven Hills, 90 Ohio App. 3d 245, 629 N.E.2d 3 (8th Dist. Cuyahoga County 1993).

3 National Federation of Independent Business v. Sebelius, 567 U.S. 519, 132 S. Ct. 2566, 183 L. Ed. 2d 450, 80 A.L.R. Fed. 2d 501 (2012); U.S. v. Comstock, 560 U.S. 126, 130 S. Ct. 1949, 176 L. Ed. 2d 878, 65 A.L.R. Fed. 2d 667 (2010); U.S. v. Bellaizac-Hurtado, 700 F.3d 1245 (11th Cir. 2012); Young v. Red Clay Consolidated School District, 122 A.3d 784, 323 Ed. Law Rep. 328 (Del. Ch. 2015); Kennedy v. State, 654 A.2d 708 (R.I. 1995).

4 Bond v. U.S., 572 U.S. 844, 134 S. Ct. 2077, 189 L. Ed. 2d 1 (2014); U.S. v. Bellaizac-Hurtado, 700 F.3d 1245 (11th Cir. 2012); City of San Jose v. State of California, 45 Cal. App. 4th 1802, 53 Cal. Rptr. 2d 521 (6th Dist. 1996); Radiofone, Inc. v. City of New Orleans, 630 So. 2d 694 (La. 1994); State ex rel. Cooper v. Tennant, 229 W. Va. 585, 730 S.E.2d 368 (2012).

5 National Federation of Independent Business v. Sebelius, 567 U.S. 519, 132 S. Ct. 2566, 183 L. Ed. 2d 450, 80 A.L.R. Fed. 2d 501 (2012).

6 National Federation of Independent Business v. Sebelius, 567 U.S. 519, 132 S. Ct. 2566, 183 L. Ed. 2d 450, 80 A.L.R. Fed. 2d 501 (2012).

7 People v. Berch, 29 Cal. App. 5th 966, 241 Cal. Rptr. 3d 51 (4th Dist. 2018).

8 State v. Bassett, 192 Wash. 2d 67, 428 P.3d 343 (2018).

9 U.S. v. Pappadopoulos, 64 F.3d 522, 42 Fed. R. Evid. Serv. 930 (9th Cir. 1995), as amended on denial of reh'g, (Nov. 13, 1995).

10 U.S. v. Mussari, 894 F. Supp. 1360 (D. Ariz. 1995), judgment rev'd on other grounds, 95 F.3d 787 (9th Cir. 1996).

11 U.S. v. Stevens, 559 U.S. 460, 130 S. Ct. 1577, 176 L. Ed. 2d 435 (2010).

12 National Federation of Independent Business v. Sebelius, 567 U.S. 519, 132 S. Ct. 2566, 183 L. Ed. 2d 450, 80 A.L.R. Fed. 2d 501 (2012).

13 Gallagher v. Commonwealth, 284 Va. 444, 732 S.E.2d 22 (2012).

14 State v. Thiel, 158 Idaho 103, 343 P.3d 1110 (2015); Oswald v. Hamer, 2018 IL 122203, 425 Ill. Dec. 626, 115 N.E.3d 181 (Ill. 2018); Krielow v. Louisiana Dept. of Agriculture and Forestry, 125 So. 3d 384 (La. 2013); State ex rel. Peterson v. Ebke, 303 Neb. 637, 930 N.W.2d 551 (2019); El Castillo Retirement Residences v. Martinez, 2017-NMSC-026, 401 P.3d 751 (N.M. 2017); Cooper v. Berger, 371 N.C. 799, 822 S.E.2d 286 (2018); Town of Boone v. State, 369 N.C. 126, 794 S.E.2d 710 (2016); City of Toledo v. State, 154 Ohio St. 3d 41, 2018-Ohio-2358, 110 N.E.3d 1257 (2018); Old Dominion Committee for Fair Utility Rates v. State Corporation Commission, 294 Va. 168, 803 S.E.2d 758 (2017).

15 State v. Moore, 161 Idaho 166, 384 P.3d 413 (Ct. App. 2016); Mid-City Automotive, L.L.C. v. Department of Public Safety and Corrections, 267 So. 3d 165 (La. Ct. App. 1st Cir. 2018); State ex rel. Peterson v. Ebke, 303 Neb. 637, 930 N.W.2d 551 (2019); Hart v. State, 368 N.C. 122, 774 S.E.2d 281, 320 Ed. Law Rep. 465 (2015); City of Toledo v. State, 154 Ohio St. 3d 41, 2018-Ohio-2358, 110 N.E.3d 1257 (2018); Satterfield v. Crown Cork & Seal Co., Inc., 268 S.W.3d 190 (Tex. App. Austin 2008); Matter of Dependency of S.K-P., 200 Wash. App. 86, 401 P.3d 442 (Div. 2 2017), aff'd on other grounds, 191 Wash. 2d 872, 427 P.3d 587 (2018).
As to the powers of the states as reserved, see § 214.
As to the effect upon the construction of a constitution of words of grant or limitation used therein, see §§ 74, 75.

16 Mid-City Automotive, L.L.C. v. Department of Public Safety and Corrections, 267 So. 3d 165 (La. Ct. App. 1st Cir. 2018); Saine v. State, 210 N.C. App. 594, 709 S.E.2d 379, 267 Ed. Law Rep. 897 (2011).

17 State v. Antonio Lujan, 2020 UT 5, 2020 WL 702636 (Utah 2020) (also providing that a state constitution's limits on the government's operation are interpreted in accordance with a public understanding of the constitution when it was originally established).

18 Cooper v. Berger, 371 N.C. 799, 822 S.E.2d 286 (2018).

19 Segars-Andrews v. Judicial Merit Selection Com'n, 387 S.C. 109, 691 S.E.2d 453 (2010).

20 NetJets Aviation, Inc. v. Guillory, 207 Cal. App. 4th 26, 143 Cal. Rptr. 3d 111 (4th Dist. 2012), as modified on denial of reh'g, (July 18, 2012).

21 People v. Berch, 29 Cal. App. 5th 966, 241 Cal. Rptr. 3d 51 (4th Dist. 2018); Oswald v. Hamer, 2018 IL 122203, 425 Ill. Dec. 626, 115 N.E.3d 181 (Ill. 2018); Franklin County ex rel. Parks v. Franklin County Com'n, 269 S.W.3d 26 (Mo. 2008); Olson v. Levi, 2015 ND 250, 870 N.W.2d 222 (N.D. 2015).

22 State ex rel. Clark v. Johnson, 1995-NMSC-048, 120 N.M. 562, 904 P.2d 11 (1995).

23 De La Mora v. Andonie, 51 So. 3d 517 (Fla. 3d DCA 2010), decision aff'd on other grounds, 101 So. 3d 339 (Fla. 2012).

24 Rispo Invest. Co. v. Seven Hills, 90 Ohio App. 3d 245, 629 N.E.2d 3 (8th Dist. Cuyahoga County 1993).

25 Franklin County ex rel. Parks v. Franklin County Com'n, 269 S.W.3d 26 (Mo. 2008); City of Asheville v. State, 192 N.C. App. 1, 665 S.E.2d 103 (2008).
As to constitutional limitations on legislative power, generally, see §§ 286 to 288.

26 State ex rel. Jackman v. Court of Common Pleas of Cuyahoga County, 9 Ohio St. 2d 159, 38 Ohio Op. 2d 404, 224 N.E.2d 906 (1967).

27 National Federation of Independent Business v. Sebelius, 567 U.S. 519, 132 S. Ct. 2566, 183 L. Ed. 2d 450, 80 A.L.R. Fed. 2d 501 (2012).

28 Riley v. Cornerstone Community Outreach, Inc., 57 So. 3d 704 (Ala. 2010).

29 State ex rel. King v. Sloan, 2011-NMSC-020, 149 N.M. 620, 253 P.3d 33 (2011).

30 State v. Moore, 161 Idaho 166, 384 P.3d 413 (Ct. App. 2016).

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# 16 Am. Jur. 2d Constitutional Law § 45

**American Jurisprudence, Second Edition** | February 2021 Update

**Constitutional Law**
Barbara J. Van Arsdale, J.D.; James Buchwalter, J.D; Paul M. Coltoff, J.D.; John A. Gebauer, J.D.; Lonnie E. Griffith, Jr., J.D.; Janice Holben, J.D.; Sonja Larsen, J.D.; Lucas Martin, J.D.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Karl Oakes, J.D.; Karen L. Schultz, J.D.; Jeffrey J. Shampo, J.D.; and Kimberly C. Simmons, J.D.

**III. Operation and Effect of Constitutions and Amendments**

**A. Operation and Effect of Constitutions and Amendments, in General**

## § 45. Territorial application; United States Constitution

Topic Summary | Correlation Table | References

**West's Key Number Digest**

West's Key Number Digest, Constitutional Law 580

**A.L.R. Library**

Application of Fourth Amendment to Evidence Seized in Foreign Jurisdiction, 3 A.L.R. Fed. 3d Art. 4
Criminal jurisdiction of courts of foreign nations over American armed forces stationed abroad, 17 A.L.R. Fed. 725

The United States Supreme Court states that the United States Constitution, in its operation, is coextensive with the political jurisdiction of the United States.[1] Thus, the Federal Constitution not only restrains the power of the federal government to act in this country but also the government's power to affect American citizens in foreign countries.[2] It has no extraterritorial effect except with respect to American citizens[3] unless the foreign country has agreed to permit United States laws to be imposed therein,[4] an exception being made for conduct on stateless vessels on the high seas.[5]

The fundamental guarantees of life, liberty, and property, made by the Federal Constitution, such as those relating to the writ of habeas corpus, bills of attainder, ex post facto laws, and trial by jury for crimes, have no relation to crimes committed outside the jurisdiction of the United States against the laws of a foreign country, nor will the Supreme Court inquire into the legality of acts committed by a foreign nation or government within its own territory, even if those acts would otherwise violate the Federal Constitution if committed in the United States.[6] An American citizen who commits a crime in a foreign country cannot

complain if required to submit to such modes of trial and to such punishment as the laws of that country may prescribe for its own people, unless a different mode is provided for by treaty stipulations between that country and the United States.[7]

For purposes of defamation suits brought in United States courts, First Amendment protections do not apply to all extraterritorial publications in foreign nations by persons under the protection of the United States Constitution.[8] The Fourth Amendment does not apply to the search and seizure by United States agents of property that is owned by a nonresident alien and located in a foreign country,[9] nor does it ordinarily apply to evidence obtained through a search conducted by an official of a foreign government in a foreign country.[10] Further, the Fifth Amendment's right against self-incrimination is not violated by statements offered in United States courts and obtained by law enforcement officers of a foreign country who do not follow the requisites of the *Miranda* decision since the exclusionary rule is inapplicable to interrogations performed by foreign law enforcement officers.[11]



Footnotes

1 The City of Panama, 101 U.S. 453, 25 L. Ed. 1061, 1879 WL 16723 (1879).
As to the territorial jurisdiction of nations, generally, see Am. Jur. 2d, International Law §§ 75 to 197.

2 Laker Airways Ltd. v. Pan American World Airways, Inc., 604 F. Supp. 280 (D.D.C. 1984).

3 U.S. v. Pink, 315 U.S. 203, 62 S. Ct. 552, 86 L. Ed. 796 (1942).

4 U.S. v. Rojas, 53 F.3d 1212, 42 Fed. R. Evid. Serv. 548 (11th Cir. 1995).

5 U.S. v. Caicedo, 47 F.3d 370 (9th Cir. 1995).

6 Neely v. Henkel, 180 U.S. 109, 21 S. Ct. 302, 45 L. Ed. 448 (1901).

7 Neely v. Henkel, 180 U.S. 109, 21 S. Ct. 302, 45 L. Ed. 448 (1901).
As to territorial jurisdiction in criminal matters, generally, see Am. Jur. 2d, Criminal Law § 425.

8 Desai v. Hersh, 719 F. Supp. 670 (N.D. Ill. 1989).

9 U.S. v. Verdugo-Urquidez, 494 U.S. 259, 110 S. Ct. 1056, 108 L. Ed. 2d 222 (1990).

10 Birdsell v. U.S., 346 F.2d 775 (5th Cir. 1965); U.S. v. Shea, 436 F.2d 740 (9th Cir. 1970).

11 U.S. v. Covington, 783 F.2d 1052 (9th Cir. 1985).

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**16 Am. Jur. 2d Constitutional Law § 46**

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**III. Operation and Effect of Constitutions and Amendments**

**A. Operation and Effect of Constitutions and Amendments, in General**

# § 46. Territorial application; United States Constitution—State constitutions

Topic Summary | Correlation Table | References

**West's Key Number Digest**

West's Key Number Digest, Constitutional Law 580

The organic law embodied within each state constitution runs with the territorial jurisdiction of the state.[1] Like a state statute,[2] a state constitution can generally operate only within the territorial jurisdiction of a state.[3] Thus, state constitutions are to be construed and considered as relating to people and institutions within the state, that is, their application is intraterritorial and not extraterritorial.[4]



Footnotes

1 State ex rel. Haught v. Donnahoe, 174 W. Va. 27, 321 S.E.2d 677 (1984).

2 As to the place of operation of statutes, generally, see Am. Jur. 2d, Statutes §§ 242 to 244.

3 Helm v. Com., 813 S.W.2d 816 (Ky. 1991).

4 State ex rel. Haught v. Donnahoe, 174 W. Va. 27, 321 S.E.2d 677 (1984); State v. Pierce, 191 Wis. 1, 209 N.W. 693 (1926).

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**III. Operation and Effect of Constitutions and Amendments**

**B. Time Constitution Takes Effect**

## § 47. Time United States Constitution and amendments take effect

Topic Summary | Correlation Table | References

**West's Key Number Digest**

West's Key Number Digest, Constitutional Law 625

The Constitution of the United States did not take effect at once on its being ratified by the necessary number of conventions in nine states, the approval of which was made a requisite to its validity.[1] By the instrument itself, it was provided that the ratifications by the states were to be reported to the Congress whose continuing existence was recognized by the convention. The new government did not actually commence until the old government in fact expired.[2]

With regard to constitutional amendments, the moment an amendment to the United States Constitution is ratified by three-fourths of the state legislatures or three-fourths of the state constitutional conventions called for such purpose[3] and the Archivist of the United States so certifies and proclaims that the amendment has become a valid part of the Constitution,[4] it becomes effective as law,[5] even if the acts against which it is directed are prohibited only after the expiration of some additional period of time after its ratification.[6]



Footnotes

1 Owings v. Speed, 18 U.S. 420, 5 L. Ed. 124, 1820 WL 2129 (1820).
As to adoption of the United States Constitution, generally, see § 10.

2 Owings v. Speed, 18 U.S. 420, 5 L. Ed. 124, 1820 WL 2129 (1820).

3 § 15.

4 § 14.

5 Massey v. U.S., 291 U.S. 608, 54 S. Ct. 532, 78 L. Ed. 1019 (1934); Dillon v. Gloss, 256 U.S. 368, 41 S. Ct. 510, 65 L. Ed. 994 (1921).

6 Druggan v. Anderson, 269 U.S. 36, 46 S. Ct. 14, 70 L. Ed. 151 (1925).

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# 16 Am. Jur. 2d Constitutional Law § 48

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**III. Operation and Effect of Constitutions and Amendments**

**B. Time Constitution Takes Effect**

## § 48. Time state constitutions and amendments thereto take effect

Topic Summary | Correlation Table | References

**West's Key Number Digest**

West's Key Number Digest, Constitutional Law 625

Where an existing state constitution provides that proposed amendments, if ratified by the requisite majority, are to become part of the constitution, such amendments, in the absence of any contrary provision, take effect from the time of their actual ratification[1] or certification,[2] unless a postponement of the effective date of a proposed constitutional amendment is submitted to the voters and adopted by them[3] or unless the terms of a given amendment either explicitly or implicitly provide for a different effective date.[4] Thus, generally, state constitutional amendments may take effect on the date that the official canvass of the returns shows that it has been adopted.[5] However, in some instances, a right given by a state constitutional provision or amendment may depend for its effectiveness on subsequently prescribed or enacted procedures or rules, in which case, the right may not become immediately effective.[6]



Footnotes

1 State ex rel. Graves v. Brown, 18 Ohio St. 2d 61, 47 Ohio Op. 2d 186, 247 N.E.2d 463 (1969).

2 State v. Sanabria, 192 Conn. 671, 474 A.2d 760 (1984).

3 City of Euclid v. Heaton, 15 Ohio St. 2d 65, 44 Ohio Op. 2d 50, 238 N.E.2d 790 (1968).

4 California Comp. & Fire Co. v. State Bd. of Equalization, 132 Cal. App. 3d 25, 182 Cal. Rptr. 745 (2d Dist. 1982); State v. Sanabria, 192 Conn. 671, 474 A.2d 760 (1984); Canfield v. Cook County, 213 Ga. App. 625, 445 S.E.2d 375 (1994).

5 Kilgore Independent School District v. Axberg, 572 S.W.3d 244, 366 Ed. Law Rep. 501 (Tex. App. Texarkana 2019), review denied, (Aug. 30, 2019).

6 State v. Sanabria, 192 Conn. 671, 474 A.2d 760 (1984).

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